

# **New Hire Reporting Frequently Asked Questions**

## **Q: What is the definition of “employer” for new hire reporting purposes?**

**A:** Federal legislation states that an “employer” for new hire reporting purposes is the same as for the federal income tax purposes (as defined by Section 3401(d) of the Internal Revenue Code of 1986) and includes any government entity or labor organization. At a minimum, in any case where the employer is required to give an individual a W-4 form, the new hire must be reported.

## **Q: What is the “date of hire” considered to be?**

**A:** The “date of hire” is the first day services are performed for wages by an individual for you.

## **Q: When must an employer report the hire?**

**A:** The report of hire must be made within 10 days of the first day services are actually performed.

## **Q: What if an employer utilizes a payroll agencies or third party to do their new hire reporting?**

**A:** Regardless of who does the reporting, the employer hiring the worker is ultimately responsible for and required to report the new hire within 10 days of the first day services were performed.

## **Q: If an employer layoffs and then re-hire an employee, or an employee returns after a leave of absence, is another report of hire required?**

**A:** If an employee returning to work is required to complete a W-4 form, another report of hire must be done. If, however, the returning employee had not been formally terminated or removed from payroll records, there is no need to report that individual. When in doubt, the employer is encouraged to report the new hire, especially upon return from a lengthy layoff, as it becomes a quick method to stop inappropriate payment of unemployment insurance benefits.

## **Q: Does a temporary agency have to report new hires for individuals placed by the agency?**

**A:** If the agency is paying wages to the individual, the agency **MUST** submit a new hire report. The individual needs to be reported only once, unless there is a break in service from the agency and a new W-4 form is required. If the agency simply refers individuals for employment and does not pay wages, the new hire report would be filed by the employer who actually pays them.

## **Q: Is an Independent Contractor reported as a new hire?**

**A:** Before the question can be answered, the employer must determine if the worker is truly an Independent Contractor, as there are different definitions throughout government entities. We strongly encourage employers to determine if the worker is a truly an Independent Contractor or in an employee/employer relationship by utilizing VDOL’s [“ABC” test](#). Federal policy states that if the work being performed is based on a contract rather than an employer/employee relationship, the

employer is not required to submit a new hire report. In such cases, the contractor is responsible for reporting his/her employees. Again, when in doubt, we encourage a report of new hire as it becomes a quick method to stop inappropriate payment of unemployment insurance benefits, as well as allowing for payment of child support.